

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

STEVE SHAPIRO and STEVE SHAPIRO  
MUSIC,

Plaintiffs,

v.

JUPITERIMAGES CORPORATION,

Defendant.

CASE NO. 3:07-CV-5540 PJH

[PROPOSED] ORDER GRANTING  
DEFENDANT JUPITERIMAGES  
CORPORATION'S MOTION TO DISMISS  
THE FIRST AMENDED COMPLAINT

Date: January 9, 2008

Time: 9:00 a.m.

Place: Courtroom 3

Defendant Jupiterimages Corporation ("Jupiterimages" or "Defendant") has filed a motion to dismiss Plaintiff Steve Shapiro's<sup>1</sup> ("Shapiro") First Amended Complaint ("FAC"). The Court hereby grants such motion for the following reasons.

It is a waste of judicial resources to have two federal court lawsuits between the same parties involving the same dispute. Shapiro's FAC in this Court, containing one claim declaratory relief, deals solely with Shapiro's purported defenses to some (but not even all) of Jupiterimages' claims against him in Connecticut federal court for fraud, negligent

<sup>1</sup> Steve Shapiro does business as Steve Shapiro Music.

1 misrepresentation, innocent misrepresentation, multiple breaches of contract, violation of the UCC,  
2 unfair trade practices and rescission.

3 Declaratory relief is discretionary. Shapiro's FAC for declaratory relief in this Court  
4 is inappropriate for three independent reasons.

5 First, Shapiro's declaratory relief FAC will not resolve all the disputes between the  
6 parties and it is improper to use declaratory relief to decide only a sliver of the controversy between  
7 the parties; in contrast, the Jupiterimages' Connecticut federal court lawsuit against Shapiro will  
8 provide complete relief between the same parties.

9 Second, Shapiro's declaratory relief FAC seeks to defeat liability in a subsequent suit  
10 for coercive relief, i.e., damages, and this is an improper use of declaratory relief.

11 Third, Shapiro's declaratory relief lawsuit in this Court was originally filed in  
12 anticipation of Jupiterimages' Connecticut lawsuit against him for damages, in order to obtain a  
13 more favorable forum or procedural posture and this is also an improper use of declaratory relief.  
14 Shapiro's FAC for declaratory relief regarding some of Shapiro's purported defenses to the  
15 Connecticut lawsuit was filed after the Connecticut lawsuit against him had been filed and this is a  
16 particularly improper use of declaratory relief. Accordingly, Shapiro's declaratory relief FAC  
17 should be dismissed.

18 IT IS HEREBY ORDERED that Defendant's motion to dismiss the FAC is  
19 GRANTED.

20  
21 Date: January \_\_\_\_\_ 2008

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22 HON. PHYLLIS J. HAMILTON  
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